ECONPILE (M) SDN BHD v. ASM DEVELOPMENT (KL) SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ALIZA SULAIMAN J
[APPLICATION FOR EXECUTION NO: WA-36-5-01-2020]
25 MAY 2021

CIVIL PROCEDURE: *Execution – Proceedings – Prohibitory order – Filing of writ of seizure and sale ('WSS') and notice of application for amended prohibitory order ('PO') against land – Whether execution creditor entitled to avail itself to machinery of enforcement by way of WSS on land as means of recovering judgment debt and obtain PO to maintain status quo pending disposal of land by sale in execution proceedings – Whether execution debtor had intention of obeying enforcement order – Whether there was sufficient cause to set aside PO – Whether execution debtor prejudiced – Whether execution creditor came to court with clean hands*

CIVIL PROCEDURE: *Stay of execution – Application for – Special circumstances – Whether arose – Whether proper exercise of discretion of court if status quo remained – Balance between competing interests of parties – Whether execution debtor would suffer irreparable harm and prejudice – Whether execution creditor would be deprived of fruits of its litigation*

LAND LAW: *Order for sale – Reserve price – Whether execution creditor entitled to obtain order for sale – Whether execution creditor's valuation report considered all relevant factors affecting market value of land – Appropriate adjustments to comparables – Whether proper guidelines followed in fixing reserve price – Rules of Court 2012, O. 47 r. 7*

By a letter of award, the execution debtor/defendant, ASM Development (KL) Sdn Bhd ('ASM') appointed the execution creditor/plaintiff, Econpile (M) Sdn Bhd ('Econpile') as its contractor to undertake works for a project ('the project') for an original contract sum of RM280 million. Eventually, disputes arose between the parties and Econpile referred the matter to adjudication under the Construction Industry Payment and Adjudication Act 2012 ('CIPAA') with the outcome being in Econpile's favour. Econpile simultaneously commenced arbitration proceedings by way of a notice of arbitration dated 18 March 2019. ASM disputed the sums claimed in the said notice and subsequently issued its notice of arbitration dated 17 May 2019. Econpile then filed a notice of application ('NoA') under originating summons to enforce the adjudication decision dated 21 June 2019 and the supplementary decision dated 7 August 2019 ('adjudication decisions') pursuant to s. 28 of the CIPAA. This court allowed the said application and ordered ASM to pay Econpile the adjudicated sum of RM59,767,269.32; legal fees of RM150,000; adjudication cost amounting to RM203,924.40;

A and costs for the said application in the sum of RM7,500 subject to allocator ('enforcement order'). At the same time, the court dismissed ASM's application to set aside and stay the adjudication decisions. In the meantime, ASM did not make payment of the sums ordered and thus, Econpile proceeded to file execution proceedings against ASM. On 28 January 2020, B Econpile filed a writ of seizure and sale ('WSS') and NoA for an amended prohibitory order ('PO') against a piece of land ('the said land'). This was followed by the filing of a garnishee proceeding under a suit against Malayan Banking Bhd ('MBB') and CIMB Bank Bhd ('CIMB'). The garnishee order absolute was pronounced where MBB and CIMB were ordered to pay C RM949.40 and RM143,566.13 respectively to Econpile. After deducting the total garnished sum from the amount granted by the High Court as per the enforcement order, the current outstanding amount payable by ASM stood at RM59,984,478.19. Thereafter, Econpile obtained the PO on the said land on 3 March 2020 and the amended PO on 18 June 2020. On 1 August 2020, ASM filed the NoA to set aside the WSS and amended PO whereby on D 6 January 2021 ('decision on 6 January 2021'), the Deputy Registrar ('DR') dismissed ASM's application. Dissatisfied with the said decision, ASM filed a notice of appeal (encl. 55) to appeal against the same. Thereafter, Econpile filed the application for an order for sale for the said land and it was allowed by the DR on 11 March 2021 ('decision on 11 March'). The public auction E was scheduled to take place on 24 May 2021 with the auction price set at RM250 million ('reserve auction price'). Being again aggrieved, ASM filed a notice of appeal (encl. 91) to appeal against the entire decision. Thus, these two appeals by ASM against the said decisions of the DR. The issues that arose were (i) whether the amended PO should be set aside; (ii) whether F Econpile had come to court with clean hands; (iii) whether a stay of execution should be allowed; (iv) whether Econpile had a right or interest to apply for an order for sale of the same; and (v) whether the reserve auction price was gravely undervalued and not reflective of the current market value of the said land.

G **Held (dismissing appeals):**

(1) ASM had not shown sufficient cause to merit an order to set aside the PO. Econpile had obtained the enforcement order, which had not been stayed or set aside up to the date of the hearing before the DR. Econpile was thus entitled to avail itself to the machinery of enforcement by way H of WSS of the said land as a means of recovering the judgment debt and to obtain the PO so as to maintain the status quo pending disposal of the said land by sale in the execution proceedings. It is only when the total amount of the judgment debt is paid that the judgment ceases to be of any avail. However, judging by ASM's actions until the date of the I hearing of the appeal, it was evident that ASM had no intention of obeying the enforcement order. (para 29)

(2) Following from the garnishee proceedings, Econpile had managed to garnish only a sum of RM144,515.53 and to the best of Econpile's knowledge, the said land was the remaining asset available in its quest of pursuing the fruits of its litigation. The said land was a piece of vacant land and Econpile would not benefit more than the outstanding judgment debt that it was entitled to under the enforcement order. Any balance proceeds from the sale of the said land would be returned to ASM. Further, the pending appeals at the Court of Appeal and ongoing arbitration proceeding would run their course. Econpile should be allowed to recover now whatever amount that it could from the sale of the said land. In the event that the outcome of the appeals and/or arbitration favour ASM, any losses that ASM might sustain from the sale of the said land could be compensated by Econpile with damages based on the commercial value of the said land. ASM had not shown that Econpile was financially incapable of doing so. (paras 30 & 31)

(3) It did not lie in the mouth of ASM to refuse to settle the judgment debt and at the same time to allege that it would be prejudiced if the said land was sold. Having compared the extent of prejudice suffered by each part if the PO was set aside, the prejudice was greater for Econpile who had been deprived of payment for the works which had been completed for the said project. ASM's contentions that Econpile did not come to court with clean hands were completely unfounded. (para 32)

(4) ASM basically relied on the sole factor that its appeal to the Court of Appeal would be rendered nugatory if a stay is not granted and that it would be a proper exercise of the discretion of the court if the *status quo* is maintained. ASM also claimed that it would suffer irreparable harm and prejudice if the appeal against the decision of the DR was not allowed as ASM stood to lose the said land even if it succeeded in the appeal. This court, however, was not persuaded that ASM had shown special circumstances for, *inter alia*, the following reasons: (i) Econpile was entitled to file a WSS and to obtain a PO based on the enforcement order which, to date, remained as a valid order. ASM had filed two applications to stay the execution proceedings, each at the High Court and the Court of Appeal, where similar arguments were raised but resulted in the dismissal of both applications with costs in Econpile's favour. A prayer for a stay of execution, if allowed, would be akin to giving it a third bite of the cherry; (ii) the allegations of 'causing hardship' to ASM and placing it in a 'difficult position' did not amount to special circumstances since ASM was in a position to avoid these complications by paying the judgment debt. The court has to balance between the competing interests of the parties and the outcome of this balancing exercise leaned towards Econpile who would suffer more

hardship and injustice of having to wait until the arbitration proceeding was completed and/or the appeals disposed of, if this court was to allow ASM's appeal. Econpile would continue to be deprived of the fruits of its litigation since mid-2019; and (iii) the said land here was not the subject matter of the dispute between ASM and Econpile in the pending appeals and arbitration. In this regard, even if the said land was sold before the conclusion of the appeals and arbitration, it would not have any effect on the outcome of those proceedings. Hence, the DR did not err in law and/or in fact in dismissing ASM's application. (paras 37-39)

(5) Econpile need not be a chargee of the said land to be entitled to obtain the order for sale. The order for sale was applied for, and obtained, by Econpile pursuant to O. 47 r. 7 of the Rules of Court 2012. It is a form of enforcement which is available to execution creditors. It was therefore erroneous for ASM to contend that the order for sale of the said land should be set aside just because of the pending appeals and ongoing arbitration. ASM was in a position to avoid the difficulties and complications that it believed to be true if the land was sold by way of an action, by paying the judgment debt. (paras 44 & 46)

(6) The said land is located off Jalan Emas within the locality of Salak Selatan, Kuala Lumpur with an area of 60,710 square metres ('sqm')/ 653,477 square feet ('sqf')/15.00 acres and is a 99 years leasehold land expiring on 17 July 2113. Its exact location is sandwiched between the Sungai Besi Expressway to the west and Maju Expressway ('MEX') to the east and is approximately 4 kilometres ('km') to the south-east of the Kuala Lumpur city centre. There was no appealable error when the DR decided to fix the reserve price for the said land at RM250 million. Econpile's valuation report ('VR') was prepared for intended sale purposes with 16 March 2020 as the date of valuation and was more recent compared to ASM's VR. Econpile's VR had considered all the relevant factors which would affect the market value of the said land such as (i) the potentialities of the said land; (ii) public utilities/services; and (iii) the location of the said land and infrastructure/roads. The comparables used in Econpile's VR had similar locality with the said land and were development lands zoned for commercial use which were within 2km to 3.5km from the said land. However, the comparables in ASM's VR were sited further with a distance of 3.5km to 7km from the said land and was located in better locations or prime areas with higher permissible plot ratio. In Econpile's VR, the market rate of the said land, derived after making appropriate adjustments to the comparables, was RM4,118 per sqm or RM383psf and this market rate was taken to determine the market value of the said land. In the upshot, the DR had correctly followed the guidelines in fixing the reserve price for the said land by scrutinising the evidence, including ASM's VR and Econpile's

VR, and the submissions. With all the relevant facts, the DR had exercised her discretion judiciously in fixing the reserve price at RM250 million and there were no compelling reasons as to why this decision should be disturbed. (paras 51, 54 & 55)

Case(s) referred to:

AmBank (M) Bhd v. Mujur Zaman Sdn Bhd & Ors [2008] 8 CLJ 754 HC ***(dist)***
ASM Development (KL) Sdn Bhd v. Econpile (M) Sdn Bhd [2020] MLJU 282 ***(refd)***
Chang Shu Hua v. Goon Fook Hong [2008] 2 CLJ 359 CA ***(refd)***
Econpile (M) Sdn Bhd v. ASM Development (KL) Sdn Bhd & Other Cases [2020] 1 LNS 940 HC ***(refd)***
Harlow & Milner Ltd v. Teasdale [2006] EWHC 1708 ***(refd)***
Indacon Sdn Bhd v. DMC Development Sdn Bhd [2019] 1 LNS 1369 HC ***(refd)***
Lee Chee Keong v. Fadason Holdings Sdn Bhd & Other Appeals [2017] 7 CLJ 295 CA ***(refd)***
Milik Perusahaan Sdn Bhd & Anor v. Kembang Masyur Sdn Bhd [2003] 1 CLJ 12 CA ***(refd)***
MMC Oil & Gas Engineering Sdn Bhd v. Tan Bock Kwee & Sons Sdn Bhd [2016] 4 CLJ 665 CA ***(refd)***
Municipal Corporation of Ahmedabad v. Voltas Ltd [1994] 2 GLR 1325 ***(refd)***
Natseven TV Sdn Bhd v. Television New Zealand Ltd [2001] 4 CLJ 722 HC ***(refd)***
Ng Tiou Hong v. Collector Of Land Revenue, Gombak [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 FC ***(refd)***
NKM Properties Sdn Bhd v. Rakyat First Merchant Bankers Bhd [1992] 3 CLJ 1680; [1992] 1 CLJ (Rep) 244 SC ***(refd)***
PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener) [2019] 6 CLJ 1 FC ***(refd)***
Pembinaan KSY Sdn Bhd v. Lian Seng Properties Sdn Bhd [1991] 1 CLJ 263; [1991] 1 CLJ (Rep) 343 SC ***(refd)***
Re Khoo Boo Gong, Decd Khoo Teng Seong v. Teoh Chooi Ghim & Ors [1981] 1 LNS 78 FC ***(refd)***
Soh Beng Tee & Co Pte Ltd v. Fairmount Development Pte Ltd [2007] 3 SLR 86 ***(refd)***
United Investment & Finance Ltd v. Universal Service Agency [1965] 1 LNS 191 HC ***(refd)***
Univein Sdn Bhd v. Malaysia Building Society Bhd [2003] 2 CLJ 514 CA ***(refd)***
Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 CLJ 210 SC ***(refd)***
Yaw Fun Fun v. Ketua Polis Daerah Gombak, Selangor & Ors [2021] 5 CLJ 852 HC ***(refd)***

Legislation referred to:

Construction Industry Payment and Adjudication Act 2012, s. 28
National Land Code, s. 259(2)(c)
Probate and Administration Act 1959, s. 34
Rules of Court 2012, O. 47 rr. 1(1)(a), (b), 6(k), 7, O. 56 r. 1, O. 92 r. 4

(Notice of Appeal in encl. 55)
For the execution creditor/plaintiff - Rohan Arasoo Jeyabalah, Amy Hiew Kar Yi & Pan Yan Teng; M/s Harold & Lam Partnership

(Notice of Appeal in encl. 91)
For the execution creditor/plaintiff - Harold Tan & Amy Hiew Kar Yi; M/s Harold & Lam Partnership

For the execution debtor/defendant - Annesha Mary Koshy; M/s Edwin Lim & Suren

Reported by Suhainah Wahiduddin

JUDGMENT

Aliza Sulaiman J:

Introduction

[1] Two appeals by the execution debtor/defendant ("ASM") against the decisions by the learned Deputy Registrar ("DR") were heard before this court, namely:

(i) the decision on 6 January 2021 where ASM's amended application in encl. 47 was dismissed with costs of RM4,000. In the said application, which was filed on 13 October 2020, ASM prayed for an order:

(a) to set aside the writ of seizure and sale dated 28 January 2020 ("WSS") and the amended prohibitory order ("PO") dated 18 June 2020;

(b) subject to the orders in sub-para (i) above, the land held under Hakmilik No. PN51515, Lot 20003, Seksyen 92A, Bandar Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur ("said land") is released according to O. 47 r. 6(k) of the Rules of Court 2012 ('RoC 2012'); and

(c) to stay the execution related to the WSS and amended PO until the disposal of ASM's appeal at the Court of Appeal against the decision of this court on 29 November 2019 in allowing the application by the execution creditor/plaintiff ("Econpile") to enforce the adjudication decision dated 21 June 2019 under s. 28 of the Construction Industry Payment and Adjudication Act 2012 ("CIPAA 2012") or pending the disposal of the arbitration proceeding between the parties at the Asian International Arbitration Centre ("AIAC"), whichever is later; and

(ii) the decision on 11 March 2021 which allowed Econpile's application in encl. 18 which was filed on 4 August 2020 for:

(a) an order for sale of the said land by public auction;

(b) the public auction to be held on 24 May 2021 at 9am at the High Court Kuala Lumpur; and

(c) the reserve price for the said land be fixed at RM250 million.

[2] Having considered the related cause papers and written submissions filed and the brief oral submissions by learned counsels appearing for the parties, the court had dismissed the appeals on 18 March 2021 with costs of RM3,500, subject to allocatur, and on 3 May 2021 with costs of RM3,000, subject to allocatur, respectively.

[3] These are my full grounds for the decisions in both appeals.

Brief Facts

[4] The facts leading to the dispute between the parties have been set out by this court in *Econpile (M) Sdn Bhd v. ASM Development (KL) Sdn Bhd & Other Cases* [2020] 1 LNS 940; [2020] MLJU 1146 and [2020] MLRHU 899.

[5] To recap in brief, by a letter of award dated 26 September 2016, ASM had appointed Econpile as its contractor to undertake Work Package 1: Diaphragm Wall, Contiguous Bored Pile, Earthworks, Piling Works And Basement Structure Works (Basement 2 to LG1) for a project known as "Cadangan Pembangunan Bercampur 69 Tingkat Yang Mengandungi 7 Blok Pangsapuri Servis (4,214 unit), iaitu: Blok A - 58 Tingkat (678 unit), Blok B - 58 Tingkat (618 Unit), Blok C - 58 Tingkat (560 unit), Blok D - 58 Tingkat (678 unit), Blok E - 58 Tingkat (618 unit), Blok G - 58 Tingkat (502 unit), 8 Tingkat Podium Tempat Letak Kereta, 7 Tingkat Ruang Perniagaan (Aras 1-7), 1 Tingkat Aras Kemudahan (Aras 9), 4 Tingkat Tempat Letak Kereta (Aras LG1, Basement 2 & Basement 1) Di Atas Lot 36190, Mukim Petaling Kuala Lumpur" ("said project") for an original contract sum of RM280 million.

[6] Eventually, disputes arose between the parties and Econpile referred the matter to adjudication under the CIPAA 2012 with the outcome being in Econpile's favour.

[7] Econpile had simultaneously commenced arbitration proceedings by way of a notice of arbitration dated 18 March 2019. ASM disputed the sums claimed in the said notice and subsequently issued its notice of arbitration dated 17 May 2019. The hearing dates have been fixed beginning in the month of March 2021 and spanning until September 2021.

[8] Econpile then filed a notice of application ("NoA") under Originating Summons No. WA-24C-113-07-2019 to enforce the adjudication decision dated 21 June 2019 and the supplementary decision dated 7 August 2019 ("adjudication decisions") pursuant to s. 28 of the CIPAA 2012. This court allowed the said application on 29 November 2019 and ordered ASM to pay Econpile the adjudicated sum of RM59,767,269.32; legal fees of RM150,000; adjudication cost amounting to RM203,924.40; and cost for the said application in the sum of RM7,500, subject to allocatur ("enforcement order"). At the same time, the court had dismissed ASM's application to set aside and stay the adjudication decisions.

[9] ASM has appealed against the decisions made by this court. The hearing at the Court of Appeal is scheduled to be held on 2 September 2021.

[10] On 9 January 2020, Darryl Goon Siew Chye J (as His Lordship then was) allowed ASM's application for a *Fortuna* injunction. Econpile is pursuing an appeal against that decision.

[11] In the meantime, ASM did not make payment of the sums as ordered and thus, Econpile proceeded to file execution proceedings against ASM.

[12] On 28 January 2020, Econpile filed the WSS and NoA for a PO against the said land.

[13] This was followed by the filing of a garnishee proceeding on 21 February 2020 under Suit No: WA-37G-13-02-2020 against Malayan Banking Bhd ("MBB"') and CIMB Bank Bhd ("CIMB"). The garnishee order absolute was pronounced on 18 August 2020, where MBB and CIMB were ordered to pay RM949.40 and RM143,566.13 (after deducting RM300 as cost of the garnishee proceeding), respectively to Econpile.

[14] After deducting the total garnished sum of RM144,515.53 from the amount granted by the High Court as per the enforcement order, the current outstanding amount payable by ASM stands at RM59,984,478.19.

[15] Thereafter, Econpile obtained the PO on the said land on 3 March 2020 and the amended PO on 18 June 2020.

[16] On 1 August 2020, ASM filed the NoA to set aside the WSS and amended PO whereby on 6 January 2021, the DR dismissed ASM's application with costs of RM4,000. Dissatisfied with the said decision, ASM filed a notice of appeal on 18 January 2021 (encl. 55) to appeal against the same.

[17] Thereafter, Econpile filed the application for an order for sale on 4 August 2020 and it was allowed by the DR on 11 March 2021. The public auction was scheduled to take place on 24 May 2021 with the auction price set at RM250 million ("reserve auction price"). Being again aggrieved, ASM filed a notice of appeal on 16 March 2021 (encl. 91) to appeal against the entire decision.

The Legal Principles

[18] The procedure governing these appeals, which are against the decisions of the DR to a judge-in-chambers, is provided in O. 56 r. 1 of the RoC 2012. It is trite that the principles for such appeals are similar to those governing an appeal from a trial on merits from the High Court to the Court of Appeal (see *Milik Perusahaan Sdn Bhd & Anor v. Kembang Masyur Sdn Bhd* [2003] 1 CLJ 12; [2003] 1 MLJ 6).

[19] It is further settled law that the "plainly wrong" test is applicable in determining whether appellate intervention is warranted in appeals of this nature. In *Yaw Fun Fun v. Ketua Polis Daerah Gombak, Selangor & Ors* [2021] 5 CLJ 852; [2020] MLJU 2316; [2020] AMEJ 1795, this court had referred to cases of high authority, including the decisions of the Court of Appeal in *MMC Oil & Gas Engineering Sdn Bhd v. Tan Bock Kwee & Sons Sdn Bhd* [2016] 4 CLJ 665; and *Lee Chee Keong v. Fadason Holdings Sdn Bhd & Other Appeals* [2017] 7 CLJ 295, where useful guidance was given as to the application of this test.

[20] Drawing upon the legal principles as elucidated in those cases, in this case, ASM has to convince this court that the DR was plainly wrong in arriving at her decision in the sense that she has so fundamentally misdirected herself; there being no or insufficient judicial appreciation of the affidavit evidence, or where the acceptance or rejection of the evidence is not founded on good reasons, and no reasonable Registrar could have reached that conclusion. It is only then that this court would be justified to intervene so as to prevent a miscarriage of justice.

Appeal Against The DR's Decision On 6 January 2021

First Issue: Whether The Amended PO Should Be Set Aside?

Second Issue: Whether Econpile Has Come To Court With Clean Hands?

The Parties' Submissions

[21] ASM submitted that there is sufficient cause to warrant the release of the said land seized under the PO on the grounds that:

(i) Econpile does not have any equitable or beneficial interest on the said land to caveat or prohibit ASM from dealing with the same;

(ii) Econpile's application for a PO is a misuse of the court process and was made merely as a form of reassurance in being able to "hold" the said land and to oppress ASM's financial status whereby ASM has suffered financial losses in not being able to utilise the said land valued at RM461,740,000;

(iii) it is unjust for ASM to be prevented from using the said land when the adjudication decisions are being disputed by the parties through arbitration (with the hearing dates from 26 October 2020 to 3 December 2020) and ASM's appeal to the Court of Appeal, and moreover, ASM has a valid set-off or counterclaim in the sum of RM276,581,893.96 which far exceeds the adjudicated sum;

(iv) there is no mandatory requirement for Econpile to obtain a PO prior to, or during, an application for an order for sale and in any event, Econpile has obtained the order for sale on 11 March 2021, hence, the PO on the said land is deemed redundant and vexatious; and

(v) the purpose of a PO is to prevent a party from dealing with a land because the applicant is interested in, or dealing with, the land, however, Econpile is only interested in the proceeds of sale of the said land which could be obtained by an auction and not through a PO.

[22] ASM further claimed that the factors as outlined above demonstrate that Econpile did not come to court with clean hands.

[23] On the other hand, Econpile submitted that ASM has failed to show sufficient cause to merit an order as sought by ASM for the following reasons:

(i) this court had dismissed ASM's application for stay of execution of the enforcement order on 29 November 2019;

(ii) the Court of Appeal has dismissed ASM's application for stay of execution on 4 January 2021;

(iii) ASM ought not to be allowed to argue prejudice when it has continuously failed, refused and/or neglected to comply with the enforcement order;

(iv) it is trite law that an appeal shall not constitute a stay whilst the fact that there is an ongoing arbitration is irrelevant in view of the enforcement order which stands as a valid order of the court which must be complied with; and

(v) the balance proceeds from the sale of the said land will be returned to ASM after the amount of the judgment debt is paid to Econpile.

[24] Econpile categorically denied that it did not come to court with clean hands and insisted that it is merely exercising its right to execute the enforcement order which ASM has chosen not to obey since more than one year ago.

The Decision Of The Court

[25] ASM's application before the DR was made pursuant to O. 47 r. 6(k) of the RoC 2012 which provides that the court may, at any time on sufficient cause being shown, order that property seized under r. 6 shall be released.

[26] The parties concede that the words "sufficient cause" are not defined in the RoC 2012. Both learned counsels relied on the same decision by the Federal Court in *Re Khoo Boo Gong, Decd Khoo Teng Seong v. Teoh Chooi Ghim & Ors* [1981] 1 LNS 78; [1981] 2 MLJ 68 where in the context of s. 34 of the Probate and Administration Act 1959 (Revised 1972) (Act 97), the court held that the test of "sufficient cause" is a strictly objective test.

[27] ASM's counsel went on to cite the case of *PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener)* [2019] 6 CLJ 1; [2019] 4 MLJ 747 to support her argument that the objective test is a test which takes into account all the relevant facts while considering the risks involved to both parties.

[28] In the meantime, Econpile's counsel drew upon the decisions from beyond our shores namely, *Municipal Corporation of Ahmedabad v. Voltas Ltd* [1994] 2 GLR 1325 and *Soh Beng Tee & Co Pte Ltd v. Fairmount Development Pte Ltd* [2007] 3 SLR 86 in submitting that "sufficient cause" should be interpreted liberally to ensure substantial justice to all parties and that "substantial justice" means injustice which had real effect, respectively.

[29] Applying the objective test by taking into account the facts as affirmed in the affidavits and balancing the interests of both parties in the circumstances of this case, I am inclined to hold that the DR did not err in her assessment that ASM has not shown sufficient cause to merit an order to set aside the PO. Econpile has obtained the enforcement order, which has not been stayed or set aside up to the date of the hearing before the DR. Mr Rohan had cited ample authorities to support his submission that the enforcement order is binding, valid and enforceable against ASM (see *Pembinaan KSY Sdn Bhd v. Lian Seng Properties Sdn Bhd* [1991] 1 CLJ 263; [1991] 1 CLJ (Rep) 343; [1991] 1 MLJ 100; *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210; [1993] 2 MLJ 217; *Natseven TV Sdn Bhd v. Television New Zealand Ltd* [2001] 4 CLJ 722; [2001] MLJU 511; and *ASM Development (KL) Sdn Bhd v. Econpile (M) Sdn Bhd* [2020] MLJU 282). Econpile is thus entitled to avail itself to the machinery of enforcement by way of WSS of the said land as a means of recovering the judgment debt and to obtain the PO so as to maintain the status quo pending disposal of the said land by sale in the execution proceedings (see too, *Indacon Sdn Bhd v. DMC Development Sdn Bhd* [2019] 1 LNS 1369; [2019] MLJU 1046). It is only when the total amount of the judgment debt is paid that the judgment ceases to be of any avail (see *United Investment & Finance Ltd v. Universal Service Agency* [1965] 1 LNS 191; [1965] 2 MLJ 235), however, judging by ASM's actions until the date of the hearing of the appeal, it is evident that ASM has no intention of obeying the enforcement order.

[30] Following from the garnishee proceedings, Econpile has managed to garnish only a sum of RM144,515.53 and to the best of Econpile's knowledge, the said land is the remaining asset available in its quest of pursuing the fruits of its litigation. The said land is a piece of vacant land and Econpile will not benefit more than the outstanding judgment debt that it is entitled to under the enforcement order. Any balance proceeds from the sale of the said land will be returned to ASM.

[31] The pending appeals at the Court of Appeal and ongoing arbitration proceeding will run their course. Econpile should be allowed to recover now whatever amount that it could from the sale of the said land. In the event that the outcome of the appeals and/or arbitration favour ASM, any losses that ASM might sustain from the sale of the said land can be compensated by Econpile with damages based on the commercial value of the said land. ASM has not shown that Econpile is financially incapable of doing so (see *Univein Sdn Bhd v. Malaysia Building Society Bhd* [2003] 2 CLJ 514; [2003] 4 MLJ 618).

[32] In the upshot, the court is in agreement with Econpile's submission that it does not lie in the mouth of ASM to refuse to settle the judgment debt and at the same time to allege that it will be prejudiced if the said land is sold. Having compared the extent of prejudice suffered by each party if the PO is set aside, this court finds that the prejudice is greater for Econpile who has been deprived of payment for the works which have been completed for the said project. ASM's contentions that Econpile did not come to court with clean hands are completely unfounded for the same reasons as elaborated above.

Third Issue: Whether A Stay Of Execution Should Be Allowed?

[33] ASM's application in encl. 47 was made under O. 47 r. 1 or O. 92 r. 4 of the RoC 2012 and/or the inherent jurisdiction of the court.

[34] O. 47 r. 1 of the RoC 2012 states as follows:

> **Power to stay execution by writ of seizure and sale (O. 47 r. 1)**
>
> 1(1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution:
>
> (a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or
>
> (b) that the applicant is unable from any cause to pay the money,
>
> then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of seizure and sale either absolutely or for such period and subject to such conditions as the Court thinks fit.

[35] In so far as O. 47 r. 1(1)(b) of the RoC 2012 is concerned, I have scrutinised the affidavits affirmed by ASM's director and there is nothing to suggest that ASM is unable from any cause to pay the judgment debt.

[36] What is then left to be considered is the requirement of special circumstances as provided under O. 47 r. 1(1)(a) of the RoC 2012. In this regard, it is trite law that the court has an unqualified discretion to grant a

stay of execution if the applicant is able to show that there are special circumstances and there are many factors that can be taken into account when applying this approach, some of which are as listed by the Court of Appeal in the case of *Chang Shu Hua v. Goon Fook Hong* [2008] 2 CLJ 359; [2008] 3 MLJ 10.

[37] In the instant case, ASM basically relied on the sole factor that its appeal to the Court of Appeal would be rendered nugatory if a stay is not granted and that it would be a proper exercise of the discretion of the court if the *status quo* is maintained. ASM claimed that it will suffer severe irreparable harm and prejudice if the appeal against the decision of the DR is not allowed as ASM stands to lose the said land even if it succeeds in the appeal. Furthermore, with reference to the case of *AmBank (M) Bhd v. Mujur Zaman Sdn Bhd & Ors* [2008] 8 CLJ 754; [2008] 3 MLJ 608, ASM contended that loss of the said land would not be adequately compensated by damages.

[38] However, the court is not persuaded that ASM has shown special circumstances in this appeal for the following reasons:

(i) Econpile is entitled to file a WSS and to obtain a PO based on the enforcement order which, to date, remains as a valid order. ASM had filed two applications to stay the execution proceedings, each at the High Court and the Court of Appeal where similar arguments were raised but resulted in the dismissal of both applications with costs in Econpile's favour. Econpile's prayer for a stay of execution in encl. 47, if allowed, would be akin to giving it a third bite of the cherry.

(ii) The allegations of "causing hardship" to ASM and placing it in a "difficult position" do not amount to special circumstances since ASM is in a position to avoid these complications by paying the judgment debt. The court has to balance between the competing interests of the parties and in my opinion, the outcome of this balancing exercise leans towards Econpile who would suffer more hardship and injustice of having to wait until the arbitration proceeding is completed and/or the appeals disposed of, if this court was to allow ASM's appeal. Econpile would continue to be deprived of the fruits of its litigation since mid-2019.

(iii) The case of *AmBank* (*supra*) which was cited by ASM can be distinguished with the facts in the present appeal. In *AmBank*, the three parcels of land were the subject matter of the dispute between the parties and the court held that the appeal to the Court of Appeal will be rendered nugatory if these three lands are sold before the appeal is disposed. In contrast, the said land here is not the subject matter of the dispute between ASM and Econpile in the pending appeals and arbitration. In this regard, even if the said land is sold before the conclusion of the appeals and arbitration, it would not have any effect on the outcome of those proceedings.

A

Pronouncement

[39] Based on the foregoing consideration, this court finds that the DR did not err in law and/or in fact in dismissing ASM's application and hence, its appeal was dismissed with costs of RM3,500 to be paid to Econpile, subject to allocatur.

B

Appeal Against The DR's Decision On 11 March 2021

The Parties' Submissions

[40] The grounds of appeal as submitted by ASM are in the main as follows:

C

(i) Econpile is not a chargee of the said land and does not have a right or interest to apply for an order for sale of the same. Econpile's right in the said land has not completely solidified due to the pending appeals and the arbitration proceeding. The enforcement order is temporary in nature and in the event that ASM succeeds in the arbitration proceeding, the adjudication decisions would cease to have effect and any execution proceeding commenced by Econpile based on the adjudication decisions would fail. As such, the order for sale of the said land should not have been granted and must be set aside since Econpile's rights have not accrued as yet.

D

E

(ii) The reserve auction price is gravely undervalued and not reflective of the current market value of the said land. In this regard, the DR had erred in her assessment of the market value of the said land by merely relying on the valuation report prepared by Jordan Lee & Jaafar dated 1 April 2020 for Econpile ("Econpile's VR"; see exh. "NHH3", encl. 19) and not giving proper consideration to the valuation report prepared by Raine & Horne International + Zaki Partners Sdn Bhd dated 15 May 2019 for ASM ("ASM's VR"; see exh. "A1", encl. 23). The market value of the said land at RM461,740,000 as per ASM's VR provides a more accurate valuation of the value of the said land as compared to Econpile's VR which has excluded crucial considerations which have an indirect effect on the value of the said land.

F

G

[41] It is observed that ASM had additionally exhibited a valuation report prepared by Henry Butcher Malaysia dated 17 February 2016 for ASM as to the market value and forced sale value of the said land for loan financing purpose ("Henry Butcher's VR"; see exh. "NMA1", encl. 63) and that a written reply and comments on ASM's VR was prepared by Jordan Lee & Jaafar on 21 January 2020 ("reply & comments"; see exh. "NHH10", encl. 58).

H

I

[42] Econpile however asserted that the appeal should be dismissed for the following reasons:

(i) Econpile is entitled to obtain the order for sale of the said land since ASM has failed to pay the judgment debt to date. The fact that there is an on-going arbitration and appeal against the enforcement order are not grounds to prevent Econpile from obtaining the order for sale.

(ii) The said land is free from encumbrances as at the date of the order for sale.

(iii) The reserve auction price reflects the true market value of the said land and is supported by Econpile's VR. The market value of the said land as derived in ASM's VR is fanciful, excessive, and unreasonable and does not reflect the actual market value of the said land at all.

(iv) On 18 March 2021, this court dismissed ASM's appeal to set aside the DR's decision dated 6 February 2021 but ASM has raised the same arguments in the instant appeal.

The Decision Of The Court

[43] ASM's ground of appeal as outlined in sub-para. 40(a) above has been addressed in the foregoing part of this judgment and the same reasoning would apply in respect of this appeal.

[44] It is trite that Econpile need not be a chargee of the said land to be entitled to obtain the order for sale. The order for sale was applied for, and obtained, by Econpile pursuant to O. 47 r. 7 of the RoC 2012. It is a form of enforcement which is available to execution creditors.

[45] In addition, Econpile's counsel, this time represented by Mr Harold Tan, had supplemented the written submission by referring to the case of *Harlow & Milner Ltd v. Teasdale* [2006] EWHC 1708 (TCC), to which this court would echo the words of Justice Peter Coulson as quoted in the passage below:

> 20. Standing back from the authorities for a moment, it is worth considering what the effect would be if I acceded to the Defendant's request not to make the order for sale because of the on-going arbitration. It would mean that any unsuccessful party in adjudication would know that, if they refused to pay up for long enough, and started their own arbitration, they could eventually render the adjudicator's decision of no effect. It would be condoning, in clear terms, a judgment debtor's persistent default, and its complete refusal to comply with the earlier judgment of the Court. For those reasons, it is a position which I am simply unable to adopt.

[46] It is therefore erroneous for ASM to contend that the order for sale of the said land should be set aside just because of the pending appeals and ongoing arbitration. As has been said earlier, ASM is in a position to avoid the difficulties and complications that it believes to be true if the said land is sold by way of an auction, by paying the judgment debt.

[47] Moving next to the issue of the reserve auction price, both learned counsels for ASM and Econpile referred to the judgment of the Federal Court as delivered by Syed Agil Barakbah FJ in *Ng Tiou Hong v. Collector Of Land Revenue, Gombak* [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289; [1984] 2 MLJ 35 where at p. 291 (CLJ); p. 37 (MLJ), His Lordship laid down the key principles in determining the market value of a piece of land, namely:

(i) market value means the compensation to be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser;

(ii) the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions;

(iii) the potentialities of the land must be taken into account;

(iv) in considering the nature of the land, regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like; and

(v) estimates of value by experts can be considered but not too much weight should be given unless it is supported with by, or coincides with, other evidence.

[48] In *NKM Properties Sdn Bhd v. Rakyat First Merchant Bankers Bhd* [1992] 3 CLJ 1680; [1992] 1 CLJ (Rep) 244; [1992] 2 MLJ 349, the main issue before the Supreme Court was on the interpretation of para. 259(2)(c) of the National Land Code, namely, whether the reserve price for the subsequent auction can be fixed higher than the reserve price of the last unsuccessful auction sale. In the course of the decision, the court at p. 249 (CLJ); p. 353 (MLJ) alluded to the task entrusted upon the Senior Assistant Registrar ("SAR") in fixing the reserve price for the purpose of the sale of the land in these words:

> The SAR is not an expert in land valuing, and he has to study the land valuation reports put before him. He may face great difficulty when the estimated market values of the land in the valuation reports put by the plaintiff and by the defendant differ greatly. In that case he has to

> scrutinise the reports carefully. If one report contains, as comparison, a schedule of recent sales of lands of similar character and land-use in the vicinity of the land to be sold, and the other report does not, he may choose to accept the first report as the correct guide. But he has to exercise his discretion in fixing the reserve price judiciously which means that he has to hear the parties, and take into consideration all matters which are relevant.

[49] With the above-mentioned guidance as explicated by the apex court in mind, I shall now proceed to analyse each of the relevant factors in the succeeding paras below.

Analysis

[50] The Federal Court in *Ng Tiou Hong* (*supra*) had opined that the safest guide is evidence of sales or similar lands of similar quality or position in the locality of the land which is in issue. This evidence can be seen in ASM's VR and Econpile's VR.

[51] It is undisputed that the said land is located off Jalan Emas within the locality of Salak Selatan, Kuala Lumpur with an area of 60,710 square metres ("sqm")/653,477 square feet ("sqf")/15 acres and is a 99 years leasehold land expiring on 17 July 2113. Its exact location is sandwiched between the Sungai Besi Expressway to the west and Maju Expressway ("MEX") to the east and is approximately 4 kilometres ("km") to the south-east of the Kuala Lumpur city centre.

[52] At the outset, the following aspects of ASM's VR and Econpile's VR must be borne in mind:

(i) ASM's VR

This VR was prepared for the purposes of internal management use with the date of valuation on 15 May 2019. At the time of inspection, the said land was occupied by illegal settlements and overgrown with light under growths, shrubs, bushes and wild trees but the valuer has disregarded the existence of the illegal settlements and had valued the said land based on a vacant site.

Four comparables were used and the details as tabulated in the reply & comments are as follows:

	Comparables in Raine & Horne's Valuation Report				
	Subject Property	**Comparable 1**	**Comparable 2**	**Comparable 3**	**Comparable 4**
	Lot No. 20003, Seksyen 92A, Kuala Lumpur	PT 9701 (8329 DLL), Jalan 2/83A, Off Jalan Pantai Baharu, Kuala Lumpur	PT 151 (OL:754), Jalan Hang Tuah/Jalan Imbi, Kuala Lumpur	PT 188, Jalan Putra/Jalan Tun Ismail/ Jalan Mahameru, Kuala Lumpur	Lot 50, Jalan Tun H.S. Lee, Taman Beringin, Kuala Lumpur
Locality	Salak Selatan	Near Pantai Business Centre	Near Bukit Bintang	Near World Trade Centre, Kuala Lumpur	Kuala Lumpur city centre
Access	Located Off Jalan Emas	Jalan 2/83A, Off Jalan Pantai Baharu	Jalan Hang Tuah, Jalan Imbi	Jalan Putra, Jalan Tun Ismail	Jalan Tun H.S. Lee
Land Area (sqm/sqf /acre)	60,710.00/ 653,477/ 15.000	1,848.53/ 19,897/ 0.457	18,469.17/ 198,800/ 4.564	17,988.92/ 193,631/ 4,445	13,938.00/ 150,027/ 3,444
Remarks	A plot of leasehold commercial land zoned for mixed development use at a permissible Plot Ratio 1:4	A plot of freehold commercial land zoned for commercial use with a permissible plot ratio of 1:4	A plot of leasehold (99 years expiring on 05/06/2115) commercial land zoned for mixed development use at a permissible plot ratio 1:8	A plot of freehold commercial land zoned for main commercial use at a permissible plot ratio of 1:8	A plot of leasehold (99 years expiring on 04/02/2103) commercial land zoned for main commercial use at a permissible plot ratio 1:8
Distance from the subject property (by radius)		4.5 km	3.5 km	7 km	4 km
Date of Transaction		8.5.2018	20.12.2017	15.6.2017	11.7.2016
Consideration (RM)		21 million	192,336,060	166,100,000	240 million
Analysis (RM psf)		1,055.41	967.48	857.82	1,599.71

(ii) Econpile's VR

This VR was prepared for intended sale purposes with the date of valuation on 16 March 2020. At the time of inspection, there were some warehouses and recycle centres on the said land and the valuer was unable to determine whether any of the occupiers were squatters. For the purpose of the report and valuation, all buildings/structures erected on the said land were disregarded.

Four comparables were also used and the details as tabulated in the reply & comments are as follows:

	Comparables in Jordan Lee & Jaafar's Valuation Report				
	Subject Property	**Comparable 1**	**Comparable 2**	**Comparable 3**	**Comparable 4**
	Lot No. 20003, Seksyen 92A, Kuala Lumpur	Lot Nos. 101468, 1560 & 1561 and P.T. Nos. 598, 304 & 305, Mukim of Petaling, Kuala Lumpur	Lot No. 26479, Mukim of Petaling, Kuala Lumpur	Lot No. 30846, Mukim of Petaling, Kuala Lumpur	Lot No. 162, Seksyen 92, Town and Kuala Lumpur
Locality	Salak Selatan	Taman Salak Selatan	Near Sungai Besi	Desa Petaling	Chan Sow Lin
Access	Located off Jalan Emas	Located Off Jalan Gempita	Jalan Sungai Besi	Lebuhraya KL-Seremban	Jalan Dua
Land Area (sqm/sqf /acre)	60,710.00/ 653,477/ 15.000	18,749.78/ 201,821/ 4.633	13,323.00/ 143,408/ 3.292	7,390.00/ 79,545/ 1.826	16,490.40/ 177,501/ 4.075
Remarks	A plot of leasehold commercial land zoned for mixed develop-ment use at a permissible Plot Ratio 1:4	Six adjacent plots of freehold development land (comprising of four plots of building land and two plots of unconverted development land). The consideration is inclusive of payment for Development Change and Improvement Service Fund.	A plot of freehold unconverted development land zoned for commercial use with a permissible plot ratio of 1:5	A plot of freehold development land zoned for commercial use with a permissible plot ratio of 1:4	A plot of freehold development land zoned for commercial use with a permissible plot ratio of 1:4

Distance from the subject property (by radius)		3.5 km	3 km	3 km	2 km
Date of Transaction		28.3.2019	1.3.2017	24.1.2017	6.4.2015
Consideration (RM)		90,300,000	39 million	19,300,000	96 million
Analysis (RM psf)		447.43	271.95	242.63	540.84

[53] ASM submitted that the reserve price of the said land which was fixed by the DR at RM250 million does not reflect the market value of the property for the following reasons:

(i) the DR failed to consider that the comparables used in ASM's affidavit are derived from the value of the land in the neighbouring area of the city centre in Kuala Lumpur and of similar nature;

(ii) the neighbourhood development around the said land consist of residential, commercial and industrial areas such as Villa Laman Tasik, Bayu Tasik 2, Royal Museum, Desa Waterpark and Plaza Tol MEX Salak Selatan; and

(iii) Comparable 4 in ASM's VR with an area of 13,938 sqm is valued at RM240 million whereas the said land has an area of 60,710sqm which is triple the size of the land in Comparable 4.

[54] I have perused ASM's VR, Econpile's VR, Henry Butcher's VR and the reply & comments and it is my considered view that there is no appealable error when the DR decided to fix the reserve price for the said land at RM250 million. My reasons are as follows:

(i) Econpile's VR was prepared for intended sale purposes with 16 March 2020 as the date of valuation and is more recent as compared to ASM's VR (15 May 2019). The date 16 March 2020 is two days before the first Movement Control Order ("MCO") was implemented by the Government. Hence, ASM's contention that the market value of the said land was somehow impacted by the MCO is unfounded. Additionally, Econpile's VR had considered comparables which were sold between April 2015 to March 2019. As such, any inflation to the market value of the lands has been taken into account.

(ii) Econpile's VR had considered all the relevant factors which would affect the market value of the said land, such as the following:

(a) The potentialities of the said land

Paragraph 9.00 in ASM's VR states that the said land has been issued with a Development Order by Dewan Bandaraya Kuala Lumpur ("DBKL") dated 5 February 2018 which is valid for one year from that date unless a building plan is submitted to the relevant authority. It was noted that as at the date of valuation, no building plan was submitted.

In para. 11.00 of Econpile's VR it is stated that (with my added emphasis) "Our verbal enquiries with Jabatan Perancangan Bandaraya, Dewan Bandaraya Kuala Lumpur revealed that the subject property **together with two adjacent plots of land (Note: these two plots of land are not within the ambit of this valuation**) were granted with development order together with the approved layout plan for a mixed commercial development (comprising of retail and serviced apartments) at an approved plot ratio of 1:6. **However, the said development order has since been lapsed**".

(b) Public Utilities/Services

Paragraph 9.00 of Econpile's VR mentions the fact that mains water, electricity supply and telephone facilities are connected to the said land. Public services such as street lighting, road maintenance and garbage disposal as provided by DBKL are also mentioned together with the availability of public transportation.

(c) The location of the said land and infrastructure/roads

Paragraph 7.00 of Econpile's VR describes these aspects in great detail and there is no doubt that the said land is located in a well-developed area surrounded by infrastructure, roads and expressways which makes it easily accessible from any direction.

(iii) There is no common comparable used in ASM's VR and Econpile's VR. The comparables used in Econpile's VR have similar locality with the said land and are development lands zoned for commercial use which are within 2km to 3.5km from the said land. For Comparable 1, the consideration paid for the land included payments for development charge and improvement service fund. However, the comparables in ASM's VR are sited further with a distance of 3.5km to 7km from the said land and are located in better locations or prime areas with higher permissible plot ratio, except for Comparable 1 (see para. 9.00 and Appendix A in the reply & comments).

(iv) In Econpile's VR, the market rate of the said land, derived after making appropriate adjustments to the comparables, is RM4,118 per sqm or RM383psf and this market rate was taken to determine the market value of the said land (see exh. I in the reply & comments).

(v) The material date of valuation for purposes of Henry Butcher's VR is 10 February 2016, which is before the issuance of the development order. Three comparables were used ie, lands designated for commercial development and situated in the vicinity of Jalan Chan Sow Lin and Jalan Sungai Besi. The dates of transactions are 6 April 2015, 23 December 2014 and 15 May 2013. According to ASM's calculations, these lands have a value ranging from RM193 million to RM240 million. The market value of the said land was concluded to be RM230 million. However, only pp. 2-4 and 7 from the Henry Butcher's VR was exhibited in ASM's additional affidavit (encl. 63). Hence, the court merely has the statement in para. 4.1 that "In comparing properties, due consideration is given to factors such as location, size, building differences, improvements and amenities, time element and other relevant factors" to arrive at the market value for the said land. These factors would presumably include public utilities and services and the two expressways which were all in existence in 2016. Hence, ASM's contention that it is insensible for the value of the said land to remain stagnant at RM250 million after four years is unjustified since there is a RM20 million increase and for reasons best known to ASM, it has chosen not to reveal the Henry Butcher's VR in full.

(vi) Jordan Lee & Jaafar had provided detailed comments in respect of each of the four comparables used by Raine & Horne in its valuation report (see para. 7.00 in the reply & comments). In contrast, there were no comments by Raine & Horne with regards to the valuation report prepared by Jordan Lee & Jaafar.

[55] In the upshot, the DR has correctly followed the guidelines in fixing the reserve price for the said land by scrutinising the evidence, including ASM's VR and Econpile's VR, and the submissions. The notes of proceedings on 20 January 2021 shows that the DR had suggested to the parties to submit an additional valuation report and this led to the filing of Econpile's additional affidavit on 26 January 2021 exhibiting the reply & comments (encl. 58) and ASM's additional affidavit on 3 February 2021 exhibiting Henry Butcher's report (encl. 63). With all the relevant facts and evidence before her, the DR had exercised her discretion judiciously in fixing the reserve price at RM250 million and there are no compelling reasons as to why this decision should be disturbed.

Pronouncement

[56] Based on all the aforesaid reasons, the DR was not plainly wrong in her decision as to Econpile's application in encl. 18. ASM's appeal was accordingly dismissed with costs of RM3,000 to be paid to Econpile, subject to allocatur.